



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

Agenda Item # 26

Prepared By:

Associate Planner

Approved By:

CDD Director

Submitted By:

City Manager

APPEAL APPLICATION, AP-03-06: JARVIS - ANRITSU

RECOMMENDED ACTION:

Adopt Resolution to deny appeal.

EXECUTIVE SUMMARY: Anritsu U.S. Holding, Inc. is appealing a condition that was placed on the approval of use permit application, UP-03-07: Jarvis – Generations Foursquare Church.

On September 23, 2003, the Planning Commission approved a conditional use permit to allow a church facility to be located in the Morgan Hill Ranch Business Park. Sufficient parking for the church (as required by the Zoning Code) was not available on the subject site. Therefore, the church secured agreements with the tenants and property owner of the parcel to the south for shared parking. The adjacent parcel is owned by Anritsu and the tenants include Gold's Gym and USI Manufacturing. The shared parking agreements provide the church with the additional parking needed to meet city standards. However, the agreements are not recorded, and could be terminated at anytime (a copy of the agreements is attached for the Council's reference). In order to ensure the long-term availability of parking for the church, the Commission required that the shared parking agreements be recorded against the property(ies) providing off-site parking. The addition of this requirement is the specific action being appealed by Anritsu. Please refer to the attached Notice of Appeal.

At the September 23 Commission meeting, Staff informed the Commission that there is one church in Morgan Hill (Church on the Rock) that is located in an industrial area and has a shared parking agreement. The shared parking agreement for Church on the Rock was not required to be recorded. Therefore, Anritsu feels the City has established a precedent of not requiring recorded parking agreements against properties. However, the Commission pointed out that Church on the Rock occupies a much smaller facility and requires fewer parking. Therefore, the two church facilities cannot be compared. Staff concurs with the Commission's decision to require the recordation of the shared parking agreements. Under the existing informal agreements, both USI Manufacturing and Anritsu could terminate their agreements, resulting in a shortage of parking for the church facility. Staff recommends that the Council uphold the Commission's decision requiring the recordation of the shared parking agreements against the property(ies) providing off-site parking. A resolution to deny the appeal application is attached to this report. A copy of the September 23 Commission staff report and minutes is also provided for the Council's reference.

It should be noted that the City received a second appeal application from Morgan Hill Ranch (Venture Corp), appealing the Commission's decision to approve the conditional use. At the public hearing, Venture Corp spoke in opposition of the project, specifically addressing parking issues and the lack of recorded shared parking agreements. Since the Commission meeting, Generations Foursquare Church and Venture Corp have entered into negotiations for the purchase of a vacant parcel north of the subject site. The church is considering purchasing the property from Venture Corp to create more parking for the church facility. In order to enable the church and Venture Corp to continue their ongoing negotiations, both parties have requested a 30-day delay of the Venture Corp appeal hearing. The Venture Corp appeal is tentatively scheduled for the December 3 Council meeting.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

RESOLUTION NO. (Deny Appeal)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING APPEAL APPLICATION AP-03-06: JARVIS – ANRITSU AND UPHOLDING THE PLANNING COMMISSION'S CONDITION REQUIRING THE RECORDATION OF SHARED PARKING AGREEMENTS FOR USE PERMIT, UP-03-07: JARVIS – GENERATIONS FOURSQUARE CHURCH (APNs 726-32-011 & -014)

WHEREAS, on July 3, 2003, the City received a use permit application for a church facility (Generations Foursquare Church) proposed to be located in the Morgan Hill Ranch Business Park; and

WHEREAS, sufficient parking for the church as required by the Zoning Code was not available on the subject site; and

WHEREAS, the church secured shared parking agreements granting Generations Foursquare Church use of the parking facilities on an adjacent property; and

WHEREAS, the shared parking agreements provided the church with the additional parking needed to meet city standards; and

WHEREAS, the shared parking agreements were not recorded and could be terminated at anytime; and

WHEREAS, on September 23, 2003, the Planning Commission approved conditional use permit application, UP-03-07: Jarvis – Generations Foursquare Church; and

WHEREAS, as a condition of the use permit approval, the Commission required that the shared parking agreements be recorded against the property(ies) providing off-site parking; and

WHEREAS, on October 3, 2003, Anritsu U.S. Holding, Inc. filed a Notice of Appeal with the City, appealing the condition requiring the recordation of the shared parking agreements for the Generations Foursquare Church; and

WHEREAS, such request was considered by the City Council at their regular meeting of November 5, 2003, at which time the City Council denied appeal application, AP-03-06: Jarvis - Anritsu; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE
AS FOLLOWS:**

SECTION 1. The approved project is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. An environmental initial study has been prepared for this application, and has been found complete, correct and in substantial compliance with the requirements of the California Environmental Quality Act. A mitigated Negative Declaration will be filed.

SECTION 3. The approved conditional use has been found consistent with the criteria for use permit approval contained in Section 18.54.050 of the Zoning Code.

SECTION 4. Off-site parking secured through shared parking agreements is required for Generations Foursquare Church to meet minimum parking standards of the City of Morgan Hill. The existing shared parking agreements with Anritsu and its tenants are not recorded and could be terminated at anytime. The recordation of the shared parking agreements is the only mechanism to ensure the long-term availability of off-site parking and compliance with City parking standards.

SECTION 5. An existing church located in an industrial area of the City of Morgan Hill (Church on the Rock) was not required to record their shared parking agreement for off-site parking. This action does not establish a precedent of not requiring the recordation of shared parking agreements for church facilities. The Church on the Rock occupies a considerably smaller facility and requires fewer off-site parking.

SECTION 6. The City Council hereby upholds the Planning Commission's condition requiring the recordation of shared parking agreements for the Generations Foursquare Church.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th Day of November, 2003, by the following vote.

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

🏰 CERTIFICATION 🏰

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on November 5, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

HEARING FOR EXEMPTION TO UNDERGROUNDING UTILITIES – 60 & 70 BISCEGLIA AVENUE

RECOMMENDED ACTIONS:

1. Open and close Hearing.
2. Grant exemption to the requirement to underground utilities with payment in lieu fees for the proposed development at 60 & 70 Bisceglia Avenue.

Agenda Item # 27

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: Two single-family residential dwellings, one at 60 Bisceglia Avenue and the other at 70 Bisceglia Avenue, were conditioned to underground the overhead utility lines along Bisceglia Avenue. The development has only 100 linear feet of frontage along Bisceglia Avenue. Pursuant to City Code Section 12.02.110 (attached), the developer is requesting exemption from the requirement to underground the overhead utility wires and requests to pay an in-lieu fee instead. Staff supports this request on the basis that the installation of these improvements on such a small scale would not be cost effective and could be installed more efficiently as a portion of a larger installation of improvements at a later date.

FISCAL IMPACT: In-lieu fees totaling \$10,300 will be placed in the Undergrounding Fund #350-37648 if this exemption is approved.



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

HEARING FOR EXEMPTION TO UNDERGROUNDING UTILITIES – 16270 MONTEREY ROAD

RECOMMENDED ACTIONS:

1. Open and close Hearing.
2. Grant exemption to the requirement to underground utilities with payment in lieu fees for the proposed development at 16270 Monterey Road.

Agenda Item # 28

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: A commercial development at 16270 Monterey Road was conditioned to underground the overhead utility lines along Monterey Road. The development has 110 linear feet of frontage along Monterey Road. Pursuant to City Code Section 12.02.110 (attached), the developer is requesting exemption from the requirement to underground the overhead utility wires and request to pay an in-lieu fee instead. Staff supports this request on the basis that the installation of these improvements on such a small scale would not be cost effective and could be installed more efficiently as a portion of a larger installation of improvements at a later date.

FISCAL IMPACT: In-lieu fees totaling \$11,330 will be placed in the Undergrounding Fund #350-37648 if this exemption is approved.



CITY COUNCIL STAFF REPORT

MEETING DATE: November 5, 2003

Agenda Item # 29

Prepared By:

**Helene Leichter
City Attorney**

Submitted By:

**J. Edward Tewes
City Manager**

APPROVAL OF COUNCIL POLICY GOVERNING EX PARTE CONTACTS

RECOMMENDED ACTION(S): Approve Council Policy 03-02 Regarding Ex Parte Contacts

EXECUTIVE SUMMARY:

This item recommends that the Council adopt a policy governing “ex parte” contacts made in connection with quasi-judicial matters under consideration by the Council or its subordinate bodies.

In general, an “ex parte” (meaning “done for one side only”) contact is:

- (1) any written or verbal communication;
- (2) made outside of a regularly noticed public hearing;
- (3) between an official with decision-making authority and one or more of the parties, or persons advocating on their behalf;
- (4) about a subject matter which is, or is about to be considered by that official;
- (5) and which seeks, either explicitly or implicitly, to influence the official’s decision.

“Quasi-judicial” means a proceeding in which a property interest is at stake, and the reviewing body is charged with applying legal standards to a specific factual situation. Common quasi-judicial proceedings in the City include issuance of discretionary land use permits, rent control hearings, and appeals of all kinds.

If ex parte contacts are made, and information is conveyed which is used by the official in making his or her decision, a violation of due process could result because the other parties may be denied a full and fair hearing because they do not have the opportunity to respond to all the evidence considered by the decision-maker.

Many agencies have explicit policies governing ex parte contacts by their council members and members of subordinate boards and commissions. In order to regularize such contacts, it is recommended that the Council adopt such a policy. A suggested policy will be distributed prior to the meeting.

FISCAL IMPACT: There is no cost to the City associated with the adoption or implementation of the Council Policy.

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 03-02

SUBJECT: Ex Parte Contacts

EFFECTIVE DATE: November 5, 2003

ORIGINATING DEPARTMENTS: City Attorney

INTRODUCTION:

In addition to its legislative functions, the City Council, or its subordinate boards and commissions, may be called upon to act in a quasi-judicial capacity. "Quasi-judicial" means proceedings in which a property interest is at stake, and the body is charged with applying legal standards to a specific factual situation. Common quasi-judicial proceedings in the City include issuance of discretionary land use permits, rent control hearings, and appeals of all kinds.

In quasi-judicial proceedings, due process principles apply. Due process requires that participants be afforded a meaningful opportunity to prepare and be heard before an impartial decision maker, and that the decision be made on the record before the decision maker. Receipt of information outside the quasi-adjudicative hearing may deprive participants of due process, as the decision-maker may be basing his or her decision on evidence outside of the administrative record, and/or not be impartial. In order to ensure due process, the Council hereby adopts the following rules.

POLICY:

Council members, or members of any appropriate subordinate body, may discuss with any member of the public or listen to discussion of the facts of any quasi-judicial matter while such matter is pending before the City or such subordinate body, if the following guidelines are followed. (Matters involving permits are pending before a city agency, board or commission when an application for a permit has been filed with the appropriate City department; otherwise a matter is pending when the appropriate notice of appeal has been filed.)

1. The fact of such discussions, and any content of such discussion which is germane to the pending matter, should be disclosed on the record at the beginning of the public hearing prior to the taking of any statements from the public or permit applicants.

2. Council members may attend noticed public hearings before subordinate boards and commissions but should not comment or engage in any discussion at such hearings. Information and evidence gained by Council members via their attendance at noticed public hearings before subordinate boards and commissions need not be disclosed at later Council consideration of the same or related matter.

3. Council members and appropriate members of subordinate bodies may visit sites and properties that are subject of pending proceedings, as long as the fact of such visits and any observations which are germane to the subject matter of the proceeding are disclosed on the record at the beginning of the public hearing prior to the taking of any statements from the public or permit applicants.

This policy is meant to augment, not supplant, any other legal obligations Council members or members of subordinate boards and commissions have regarding such contacts, including but not limited to disclosure of conflicts of interest under the Political Reform Act, Government Code section 81000 *et seq.*, and/or adherence to open meeting laws such as the Ralph M. Brown Act, Government Code section 54950 *et seq.*.

APPROVED:

DENNIS KENNEDY, Mayor